



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

JMM/SK  
F.#2013R00948

*610 Federal Plaza  
Central Islip, New York 11722*

November 25, 2014

By ECF with Courtesy Copy by Interoffice Mail

Honorable Joseph F. Bianco  
United States District Court  
Eastern District of New York  
100 Federal Plaza  
Central Islip, New York 11722

Re: United States v. Philip Kenner  
Criminal Docket No. 13-607(JFB)

Dear Judge Bianco:

The government respectfully submits this letter pursuant to the Court's order at the November 17, 2014 detention hearing to provide details of the government's earlier proffer that investor funds were siphoned off by the defendant to, among other things, pay nearly \$500,000 towards the defendant's ex-wife's American Express credit card.

Summary of Attached Exhibits

The attachments (Government's Exhibits ("GX") 1A through GX 7B) consist of bank statements, wire transfer details, and credit card statements tracing that between January 18, 2005 and February 24, 2006, the defendant Philip Kenner diverted \$447,000 from investor letters of credit and/or various LLC's that he controlled in seven separate instances to an American Express account in his wife's name. Relevant transactions on the attachments have been highlighted in yellow. Furthermore, an Excel spreadsheet summarizing the seven diversions is attached at GX 8. Because the records contain sensitive personal data, the exhibits are not filed on ECF.

GX 1A – 1D: Diversion of Funds from Investors Nolan and Murray

The highlighted transactions at GX 1A reflect two draw-downs by Kenner on letters of credit from investors Owen Nolan and Glen Murray in the amounts \$150,000 and \$230,000 respectfully. Neither investor authorized such activity. In fact, Nolan subsequently commenced arbitration against the defendant, won a \$2.3 million based on some of the fraudulent transactions that make up part of this indictment, and whose action

led to the depositions proffered by the government during the November 17, 2014 detention hearing, resulting in Kenner providing various (and from the government's point of view) false claims about residence and his lack of control of assets in Baja Ventures 2006, LLC.

Highlighted transactions at GX 1B show Nolan and Murray's money being sent first to an account in the name of Little Isle IV, LLC, of which \$250,000 was immediately wired out to Diamante Del Mar, LLC ("Diamante DM").<sup>1</sup> From Diamante DM's records, \$100,000 was wired to American Express for the benefit of "Philip A. Fenner [sic]" on January 19, 2005 (GX 1C). The wire appears as a payment against the balance in an American Express account held in the name of Mrs. Kenner, at the address that the defendant told Pretrial Services has been his place of residence since 2001, on January 21, 2005. (GX 1D). The defendant maintained his own card, ending in "74012," through Mrs. Kenner's account. *Id.* All the diversions summarized herein were to the defendant's card number within his wife's American Express account.

#### GX 2A – 2D: Diversion of Funds from Investor Steven Rucchin

On February 7, 2005, through Little Isle IV, the defendant drew \$300,000 from the credit line of Steven Rucchin, (GX 2A), and wired that money to Diamante DM, (GX 2B), without the knowledge of Rucchin. A statement from Diamante DM and wire transfer detail records show the \$300,000 being credited to Diamante DM on February 8, 2005, comprising account's daily balance, less outstanding debits. (GX 2C, p. 3). On February 9, 2005, a \$25,000 wire transfer was posted, (*Id.*, p. 2). Wire transfer details show the money being sent to the same Kenner American Express account noted above. (GX 2D). The government has not located a corresponding American Express bill showing the \$25,000 payment to date.

#### GX 3A – 3B: First Use of Baja Development Corp. to Divert Funds

On May 25, 2005, Baja Development Corp., a company owned by Kenneth Jowdy's brother, received a \$35,000 "transfer credit," (GX 3A) the source of which remains under investigation. However, that same amount of money was immediately transferred out of Baja Development to pay the Kenner American Express account noted above. (GX 3B).

#### GX 4A – 4D: Second Use of Baja Development Corp. to Divert Funds

Kenner was the managing partner in Ula Makika LLC ("Ula"), one of several entities through which Kenner represented he would invest in the development of the

---

<sup>1</sup> In 2011, Murray won a judgment in Nevada against Kenneth Jowdy for, *inter alia*, unjust enrichment arising from losses sustained through Jowdy's management of Diamante DM. However, Murray will testify that his investments through Kenner were specifically for the purchase of condominium units in Las Vegas, not a golf course resort in Mexico, and that Kenner never advised him that he had diverted his investments to Mexico.

Hawaiian properties. Earlier in the month, Ula transferred \$275,000 to co-defendant Constantine. (GX 4A p. 1). Witnesses will testify they had no idea at that time who Constantine was or why he received such transfers from Kenner. By the end of August, Ula's account balance hovered between approximately \$3,500 and \$9,226. (GX 4A p. 3).

On August 26, 2005, Ula received an infusion of cash in the form of a \$140,000 wire deposit. (GX 4A, p. 2). The money originated with Ethel Kaiser, the mother of one of the defendant's former business partners (GX 4B pp. 1 and 2), who on the same day had deposited \$300,000 into Kenner's other Hawaiian investment firm, Kau Holding Company, LLC. Immediately, almost half of Mrs. Kaiser's deposit into Kau was transferred into Ula, for no reason having to do with the Hawaiian development. Kenner then immediately transferred \$110,000 from Ula to Baja Development. (GX 4B p. 2). On the same day he directed Jowdy's brother, via an email, to send \$85,000 from Baja Development "to AMEX for me ASAP." (GX 4D).

The \$85,000, all of which originated from Mrs. Kaiser's initial deposit into Kau, was then used to pay the Kenner American Express account (GX 4E) on August 29, 2005, leaving the Ula account balance back down to just over \$4,000. (GX 4A p. 3).

#### GX 5A – 5C: Fourth Use of Baja Development Corp. to Divert Funds

In September 2005, Kenner orchestrated a third transfer of funds to pay his the American Express card. On September 26 and 27, 2005, Baja Development received a \$50,000 wire deposit. (GX 5A p.3). The money originated from a Wells Fargo account in Kenner's name, but only after that account receiving an infusion from Constantine, the recipient of earlier diversions. (See e.g., above, GX 4A p. 1).

Three days earlier, Kenner emailed Baja Development to advise that a \$50,000 deposit had been made, ". . . BUT I NEED lynne to wire \$40,000 to AMEX Monday. That is critical. Gracias." (GX 5B). In fact, \$42,000 was wired from Baja to the Kenner American Express account on September 27, 2005. (GX 5C).

#### GX 6A – 6D: Use of Diamante Properties LLC to Divert Funds

On January 24, 2006, Baja Development received a deposit of \$79,985, from a JPMorgan Chase account at the direction of Kenner. (GX 6A, 6B p. 2). Records subpoenaed from JP Morgan Chase showed no evidence of Kenner having authority on a personal or corporate account at Chase during January 2006. In preparation for this submission, the government requested further detail from Chase regarding the transaction. Chase personnel have advised that the bank acted as a U.S. correspondent for this wire, and that its records indicate that the \$79,985 had been wired at Kenner's direction from Cotts Bank von Ernst, Ltd., a Swiss account apparently controlled by the defendant, the existence of which was unknown to the government until this writing. The government is currently attempting to secure the relevant documentation pursuant to the original grand jury subpoenas issued

JPMorgan Chase. Alternatively, the records will be sought pursuant to Rule 17(c) subpoena, with the Court's permission.

Nevertheless, on the day of the \$79,985 deposit, Baja Development transferred \$80,000 to Diamante Properties, LLC (GX 6B p. 2, 6C p. 2), a company in which the defendant held a 6.5% ownership interest independent of his clients. The \$80,000 was immediately transferred from Diamante to the Kenner American Express account. (GX 6C p. 1 and 6D).

GX 7A – 7B: Diversion of Diamante DM Loan Funds

As noted above, Diamante DM, a company run by Kenneth Jowdy for the purpose of developing a golf resort in Mexico, received investments through the defendant's Hawaiian real estate development companies. At trial, records will show that defendant Kenner began diverting investor funds to Diamante DM beginning approximately 2004, without their consent or knowledge.

In February 22, 2006, Jowdy's Diamante DM obtained a \$2.1 million hard money (i.e., asset-backed) loan from KSI Capital Corp. of New Jersey. (GX 7A p. 3). On February 22, 2006, Diamante DM wired \$80,000 to the Kenner American Express account although Kenner had no personal equity in Diamante, other than the monies he had diverted from his investor client. (GX 7B).

Conclusion

The government submits the attached pursuant to the Court's order and to supplement its earlier proffers in support of the defendant's detention pending trial.

Respectfully submitted,

LORETTA E. LYNCH  
United States Attorney

/S/

By:

\_\_\_\_\_  
James Miskiewicz  
Saritha Komatireddy  
Assistant U.S. Attorneys

cc: Richard Haley, Esq. (w/attachments)  
Clerk of the Court (via ECF w/o attachments)